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void unless in writing: Comp. Laws, sect. 3179. The only other provision supposed to be involved is that which declares that every agreement which by its terms is not to be performed within one year must be in writing: Id. sect. 3183.

The distinction between an agreement for a lease and the lease itself was pointed out in *Tillman v. Fuller*, 13 Mich. 113. It is very well settled that a lease may be made to take effect in future, and that the estate does not begin with the contract, but with the future period: *Young v. Dake*, 5 N. Y. 463; *Trull v. Granger*, 8 N. Y. 115; *Wood v. Hubbell*, 10 N. Y. 479. It is held in New York, under a statute corresponding to ours, that an agreement by parol for a future term not exceeding one year is valid, and not within the statute: *Young v. Dake*, *supra*. That case is well considered, and is, we think, a fair construction of the statute, which ought not to be given a strained meaning. The same doctrine has been adhered to in that state, and is reaffirmed emphatically in *Becar v. Flues*, 64 N. Y. 518, where a tenant was held liable for the agreed rent, who had never gone into possession, and had declined to do so. Concurring, as we do, in this view of the law, we think the court below erred in its ruling, and should have allowed a recovery of damages for the injury done plaintiff.

We note further in the record that the right of possession seems to have been determined in plaintiff's favor in proceedings before a commissioner, and we cannot understand why on any theory his recovery, to some extent at least, was questionable. But as tenant for a year he was of course entitled to larger damages.

The judgment must be reversed with costs, and a new trial granted.¹

Supreme Court of Oregon.

WHITE v. HOLLAND, ET AL.

A lease of land for a year, to commence *in futuro*, is "an agreement not to be performed within a year," within the meaning of the Statute of Frauds, and must be in writing; otherwise it is invalid.

APPEAL from a judgment of the Circuit Court for Multnomah County.

¹ See note to next case, p. 387.

On January 20th, 1881, the respondents made a parol lease of certain premises to the appellant for the term of one year, to commence on March 1st, ensuing. Before the latter date, however, they disclaimed their agreement and refused to give possession. The appellant then brought this action for damages for breach of the agreement, alleging the foregoing facts in his complaint, and upon a trial by jury obtained a verdict for \$500. The court below set the verdict aside, and afterward rendered judgment on the pleadings for the respondents. Both these rulings were made on the ground that the parol lease was an agreement not to be performed within a year, and therefore invalid under the Statute of Frauds adopted in this state.

This appeal was taken from such order and judgment.

A. H. Tanner, for the appellant.

Wm. Strong & Sons, for the respondent.

WATSON, C. J.—The principal question presented by this appeal is whether a parol lease of lands for a year, to commence *in futuro*, is “an agreement not to be performed within a year,” within the meaning of our Statute of Frauds, and therefore invalid.

This identical question appears to have been already decided in the affirmative by this court in a previous case: *Pulse v. Hamer*, 8 Or. 251.

The distinction which appellant’s counsel has sought to draw between the two cases is manifestly unsound. The facts stated in the opinion in that case raise the precise question presented here, and the principle announced is equally applicable to both. But if the point could be regarded as still open, we should not hesitate to adopt the views of the court in that case as correct under the provisions of our statute. These provisions must be construed with reference to the context as it appears in the code. The code itself is an original act, and the rule of construing by the context is fully applicable. These provisions are found under the title “of indispensable evidence.” They cover all the subjects usually embraced in the Statute of Frauds adopted in other states, and they stand in such order and connection that there is no ground for saying, as in the later decisions in New York and those of Iowa, that the declaration that “an agreement that by its terms is not to be performed within a year from the making thereof is void,” applies

only to personal property and choses in action, and does not affect transfers or leases of realty. If this provision does apply to leases of real property in this state, and we can perceive no reason from the context for excluding them from the operation of such general language, then it will accord with all the authorities to hold the lease involved in this action invalid.

For a lease for a year to commence at a future time is an agreement that by its terms it is not to be performed within a year from the making thereof: *Wolf v. Dozer*, 22 Kan. 436; *Atwood v. Norton*, 31 Ga. 507; *Delano v. Montague*, 4 Cush. 42.

We think, therefore, that it must be regarded as settled in this state that a parol lease of real property for a year, to commence *in futuro*, is invalid, as being in conflict with such provision.

The judgment of the Circuit Court is affirmed.

The points adjudicated in the two principal cases are certainly of great importance and interest. There can be no doubt that, as stated by the learned judge who delivered the opinion in the case of *Whiting v. Ohlert*, it is well settled that a lease for years may be made to take effect *in futuro*, and that the estate does not begin with the contract, but with the future period. See *Taylor on Land. & Ten.*, sect. 72. A careful reading of the case of *Young v. Dake*, 5 N. Y. 463, will, it is believed, satisfy any unprejudiced mind as to the correctness of the decision both of that case and of the principal case above referred to. Besides the cases referred to by the court, see *Taggard v. Roosevelt*, 2 E. D. Smith 100; *Sobey v. Brisbane*, 20 Ia. 105; *Huffman v. Startes*, 31 Ind. 474; *Fall v. Hazlerigg*, 45 Ind. 576; *Allen v. Devlin*, 6 Bosw. 1; s. c. *nom. Smith v. Devlin*, 23 N. Y. 363. See, however, *Olt v. Lohnas*, 19 Ill. 576; *Wheeler v. Frankenthal*, 78 Ill. 125, where a contrary conclusion was arrived at upon the construction of a similar statute. No authorities are cited by the court in the former case in support of their position, and the second case follows the first in that direction. Where, however, the statutes, as did the

English Statute of 29 Chas. II., c. 3, contain the words, "all leases not exceeding the term of three years (or one year as in many of the United States) *from the making thereof*," a different conclusion may well be arrived at in those cases where the term contracted for will not expire till after the statutory limitation from the making of the contract. See *Taylor on Land. & Ten.*, sect. 34.

As to the point described in *White v. Holland*, our opinion has always been that the provision respecting agreements "not to be performed within the space of one year, &c.," did not refer to verbal leases; and a careful perusal of the principal case, of the case of *Pulse v. Hamer*, 8 Or. 251 (in which say the court in the principal case, this identical question appears to have been already decided in accordance with the ruling in the principal case), and other cases holding the same doctrine does not satisfy us of the incorrectness of our opinion. The case of *Pulse v. Hamer*, as we understand it, decides nothing of the sort; but does decide that "where one man agrees by parol to lease land to another for a term of years to begin in the future, and agrees at the same time to put such parol contract in writing, *and no con-*

sideration passes between the parties, either party may disregard the parol contract, and if the lessee go on the land at the commencement of the term named in the parol agreement without the request of the lessor, his possession thus obtained will not give him any rights under such parol contract. The point decided in the second principal case is not, however, without support by the authorities. Besides the cases cited by the court, see *Roberts v. Tennell*, 3 T. B. Mon. 247; *Comstock v. Ward*, 22 Ill. 248; *Olt v. Lohnas*, 19 Ill. 576; and *Wheeler v. Frankenthal*, 78 Ill. 125. With respect to these cases and the ones cited in the principal case, it is to be observed that, with the exception of the case of *Olt v. Lohnas*, they either assume the point in controversy and decide the question without argument, or follow the case of *Edge v. Strafford*, decided

in the Exchequer in 1831, 1 Crompt. & Jer. 391. The reasoning of the court in *Olt v. Lohnas*, is to our mind unsatisfactory, and the better doctrine is believed to be that deducible from the cases of *Birckhead v. Cummins*, 33 N. J. Law 44, and *Huffman v. Startes*, 31 Ind. 474. The authorities will be found collected and considered in these cases, both of which are very well considered cases. See, also, Brown on the Statute of Frauds, sects. 37, 37 a; *Young v. Dake*, 5 N. Y. 463; *Sobey v. Brisbee*, 20 Ia. 105; *Taggard v. Roosevelt*, 2 E. D. Smith 100; *Fall v. Hazlerigg*, 45 Ind. 576. On the whole, we are of the opinion that the doctrine of the Michigan case, which involves the point decided by the Supreme Court of Oregon, is the more reasonable and better doctrine.

MARSHALL D. EWELL.

Chicago.

Supreme Court of Pennsylvania.

COMMONWEALTH EX REL. SELLERS v. PHOENIX IRON CO. ET AL.

A shareholder in a corporation is entitled to a mandamus to compel the officers holding corporate documents to allow him an inspection and copies of them at reasonable times for a specific and proper purpose, upon showing a refusal on their part to allow such inspection.

Where a shareholder alleges that the majority of the stock is held by certain officers of the corporation, who control its business, manage its affairs to advance their private interests and deny him all access to, or opportunity for inspection of, the corporate books and papers, and that he is about to file a bill in equity to restrain such illegal management, he is entitled to a mandamus to compel the officers to allow him to inspect books and papers which contain information on the subject of his complaint.

WRIT OF ERROR from Common Pleas No. 2, of Philadelphia.

This was a petition by the Commonwealth of Pennsylvania, at the relation of George H. Sellers, against a corporation known as The Phoenix Iron Company, and the president, directors, treasurer and secretary of the company, praying for a writ of alternative mandamus requiring the defendants to give to relator and his clerks at reasonable times, access to certain of the books and papers of the corporation.